

## SECTION 8. STANDARDS FOR EVALUATING CONDITIONAL USES, CHANGING ZONING DISTRICTS AND GRANTING VARIANCES

The following information may be used by the Planning and Zoning Committee, Town Board or Board of Adjustment prior to or during proceedings where conditional use permits, zoning district changes or variances are being considered. Conditions of approval can be attached by the Planning and Zoning Committee, Town Board or Board of Adjustment to address problems which are not direct conflicts of the interest of this Ordinance. The following guidelines are not all inclusive.

### 8.1 Site Design and Physical Characteristics

- (1) Existing topography, drainage patterns and vegetative cover and the suitability of the proposed use in this regard.
- (2) Availability of water, sewer, rail and other services and the utility requirements of the proposed site.
- (3) Where public sewers are not available, the percolation characteristics of the soil.
- (4) Adequacy of the proposed internal circulation system, including safety consideration.
- (5) Access to sites from the internal circulation system.
- (6) The costs of providing various public services.
- (7) Appearance--how the area will look?

### 8.2 Site Location Relative to the Public Road Network

- (1) Convenient access to a public road network--safety of access points.
- (2) Visibility from the proposed road and the need for visibility.
- (3) Location to provide access primarily by right-hand turning movements.

### 8.3 Land Use

- (1) Compatibility with existing or proposed uses in the area.
- (2) Relation to any existing land use plan.
- (3) Relation to existing or proposed development at nearby interchanges.

### 8.4 Traffic Generation

- (1) Amount of daily and peak-hour traffic to be generated, related to site size; traffic to be subclassified as to arterial, collector and local streets.

(2) Amount of traffic generated relative to existing land anticipated ultimate generated traffic in the area.

(3) Expected composition of site-generated traffic by vehicle types.

(4) Effect of site-generated traffic on the operation of the area.

(5) Safety and convenience to future users.

#### 8.5 Community Effects

(1) Immediate and long-range tax base.

(2) Access to market or service area.

(3) Relation to scenic or recreation values.

(4) Relation to the public interest, the purpose and intent of this Ordinance, and substantial justice to all parties concerned.

(5) Compliance with the Town's Smart Growth Comprehensive Plan's Goals and Objectives.

#### 8.6 Other Relevant Factors

(1) See Performance Standards in Section 13 of this Ordinance.

(2) Any other information which may be relevant to the specific request for conditional use permit, zoning district change or variance.

## SECTION 9. BOARD OF ADJUSTMENT

### 9.1 Establishment

There is hereby established a Board of Adjustment for the Town for the purpose of hearing appeals and applications, and granting variances and exceptions to the provisions of this Zoning Ordinance.

### 9.2 Membership

The Board of Adjustment shall consist of three (3) members appointed by the Town Chairperson and confirmed by the Town Board.

(1) Terms shall be staggered three-year periods.

(2) Chairperson shall be designated by the Board of Adjustment.

(3) Conflict of Interest. Any member who has any interest in a matter before the Board shall not vote thereon and shall remove himself from any meeting or hearing at which said matter is under consideration.

(4) An Alternate Member may be appointed by the Town Chairperson for a term of three (3) years and shall act only when a regular member is absent or refuses to vote because of conflict of interest.

(5) No member shall be a Town Board member, Planning and Zoning Committee member, the Building Inspector or the Zoning Officer.

(6) Secretary shall be designated by the Board of Adjustment.

(7) Building Inspector and Zoning Officer shall attend all meetings for the purpose of providing technical assistance when requested by the Board of Adjustment.

(8) Official Oaths shall be taken by all members in accordance with Section 19.01 of the Wisconsin Statutes within ten (10) days of receiving notice of their appointment.

(9) Vacancies shall be filled for the unexpired term in the same manner as appointments for a full term.

(10) Compensation shall be as determined by the Town Board.

### 9.3 Organization

The Board of Adjustment shall organize and adopt rules of procedure for its own government in accordance with the provisions of this Ordinance.

(1) Meetings shall be held at the call of the Chairperson and at such other times as the Board may determine. All meetings shall be open to the public.



(2) Minutes of the proceedings and a record of all actions shall be kept by the Secretary, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, the reasons for the Board's determination, and its findings of fact. The Secretary shall keep records of the Board's examinations and other official actions, all of which shall be immediately filed with the Town Clerk and shall be a public record.

(3) The Concurring vote of two (2) members of the Board shall be necessary to exercise the powers enumerated in 9.4(1), (2), (3), and (4).

#### 9.4 Powers

The Board of Adjustment shall have the following powers:

(1) Errors. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Building Inspector, the Zoning Officer or by the Planning & Zoning Committee or its delegates in the enforcement of codes, regulations or ordinances under their jurisdiction.

(2) Variances. To hear and grant applications for variances as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement will result in practical difficulty or unnecessary hardship, so that the spirit and purposes of the Ordinance shall be observed and the public safety, welfare, and justice secured. Use variances shall not be granted, nor shall a variance be granted where the conditions exist as a result of a self-imposed hardship.

(3) Interpretations. To hear and decide applications for interpretations of the codes, regulations, ordinances and the boundaries of the zoning districts after the Planning & Zoning Committee has made a review and recommendations.

(4) Permits. The Board may reverse, affirm wholly or partly, modify the requirements appealed from, and may direct the issuance of a permit.

(5) Assistance. The Board may request assistance from other town and county officials, departments, commissions, and boards.

(6) Oaths. The Chairperson, or in his or her absence the Acting Chairperson, shall administer oaths and may compel the attendance of witnesses.

#### 9.5 Appeals and Applications

Appeals from the decision of the Building Inspector, the Zoning Officer or the Planning & Zoning Committee concerning the literal enforcement of this Ordinance may be made by any person aggrieved or by an officer, department, committee, board, or bureau of the Town. Such appeals shall be filed with the Secretary within thirty (30) days after the date of written notice of the decision or order of the Building Inspector, the Zoning Officer or the Planning & Zoning Committee. Applications for variance and for interpretations of the codes, regulations, ordinances and the boundaries of the zoning districts may be made by the owner of or lessee of the structure, land, or water to be affected at any time and

shall be filed with the Secretary. Such appeals and applications shall include the following:

- (1) Name and Address of the appellant or applicant and all abutting and opposite property owners of record, and owners within two hundred (200) feet.
- (2) Plat of Survey prepared by a registered land surveyor showing all of the information required under Section 6.3 for a Building Permit and Section 7.3 for a Zoning Permit.
- (3) Additional Information required by the Town Planning & Zoning Committee, Board of Adjustment, Building Inspector or Zoning Officer.
- (4) Fee Receipt from the Town Treasurer in an amount equal to the greater of (a) \$250 or such amount as may be determined from time to time by Town Board resolution, or (b) the cost of legal notice publication and all other expenses related to the hearing.

#### 9.6 Hearings

The Board of Adjustment shall hold a public hearing within thirty (30) days of receiving written application for the hearing, give public notice thereof at least ten (10) days prior to the hearing by publication of a Class 1 notice under Chapter 985 of the Wisconsin Statutes, and shall give due notice to the parties in interest, the Building Inspector, the Zoning Officer, and the Town Planning and Zoning Committee. At the hearing the appellant or applicant shall appear in person, by agent, or by attorney.

#### 9.7 Findings

The decision of the Board shall be accompanied by findings of fact. In this regard, no variance to the provisions of this Ordinance shall be granted by the Board unless it finds that all the following facts and conditions exist and so indicates in the minutes of its proceedings.

(1) Exceptional Circumstances. There must be exceptional, extraordinary, or unusual circumstances or conditions applying to the lot or parcel, structure, use, or intended use that do not apply generally to other properties or uses in the same district and the granting of the variance would not be of so general or recurrent nature as to suggest that the Zoning Ordinance should be changed.

(2) Absence of Detriment. The variance will not create substantial detriment to adjacent property and will not materially impair or be contrary to the purpose and spirit of this Ordinance or the public interest.

#### 9.8 Decision

The Board of Adjustment shall decide all appeals and applications within thirty (30) days after the final hearing and shall transmit a signed copy of the Board's decision to the appellant or applicant, Building Inspector, Zoning Officer and Town Planning & Zoning Committee.

(1) Conditions may be placed upon any Building Permit and/or Zoning Permit ordered or authorized by the Board.

(2) Variances granted or Building and/or Zoning Permits directed for issuance by the Board shall expire within six (6) months unless substantial work has commenced pursuant to such grant.

9.9 Review by Court of Record

Any person or persons aggrieved by any decision of the Board of Adjustment may present to the Court of Record a petition duly verified setting forth that such decision is illegal and specifying the grounds of the illegality. Such petition shall be presented to the Court within thirty (30) days after the filing of the decision in the office of the Town Clerk.

9.10 Livestock Facility Siting

The Board of Adjustment is not authorized to grant a variance from the state requirements related to livestock facility siting, except as provided in § 93.90 of the Wisconsin Statutes and in Chapter ATCP 51 of the Wisconsin Administrative Code.